UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1103
19 December 1991

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1103rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 28 October 1991, at 3 p.m.

Chairman: Mr. POCAR

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GE.91-18139/4056B

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued) (CCPR/C/58/Add.10 and Add.13; M/CCPR/91/36/Rev.3)

1. The CHAIRMAN said that the Committee was continuing its consideration of the third periodic report of Poland (CCPR/C/58/Add.10 and Add.13). He invited the Polish delegation to reply to the questions which had been asked by members of the Committee concerning section I of the list of issues to be taken up in connection with the consideration of the report (M/CCPR/91/36/Rev.3).

2. Mrs. SKORZEWSKA-LOSIAK (Poland) said that rather than reply individually to each question, she had endeavoured to reply globally to the various questions that had been asked on the same points.

3. On the question of the status of the international instruments ratified by Poland in Polish domestic law, and in particular the direct implementation of the Covenant, she stated that responsibility in that area lay with the Administrative High Court, whose president was none other than Mr. Zielinski, a former member of the Committee. The jurisprudence of Polish courts had evolved considerably in recent years, and all international instruments ratified by Poland now had the status of law within the internal legal order. Thus, some independent courts had handed down decisions based on provisions of the Covenant. In addition, the Constitutional Court played a fundamental role: it determined the status of the provisions of the international instruments in the internal legal order, and advised the Diet and the Senate on amendment of the Constitution. It had thus stated that the international human rights instruments prevailed over ordinary national legislation. The draft amendments to the Constitution which should be approved shortly by Parliament were being prepared with the Covenant as a model. Apart from the rights embodied in the Covenant, slavery and imprisonment for debt had been abolished in Poland, and the rights and freedoms embodied in the Constitution could not be interpreted in such a way as to restrict or limit the exercise of the rights established in the international instruments ratified by Parliament, instruments which had binding force and prevailed over ordinary legislation in the event of incompatibility.

4. The publicity given to the provisions of the Covenant had certainly not been as extensive as it should have been and measures were now being taken to remedy that shortcoming. Thus, in May 1991, her Government had concluded an agreement with the Centre for Human Rights with a view to strengthening human rights documentation and information services. The Centre was providing its financial support for the execution of the programme, which was of two years' duration. In addition, her Government was cooperating closely with the Council of Europe, and the Helsinki Committee was promoting the teaching of human rights in Polish schools, law faculties and work-related courses. When Poland acceded to the Optional Protocol, publicity in that area would be intensified. A series of publications relating specifically to human rights had already been appearing regularly since 1989 and, in due course, the text of the Optional Protocol would be published in the official gazette of the Republic of Poland. Polish citizens would of course still have reasons for

addressing complaints to the Committee owing to a certain ineffectiveness of the legal and administrative system, but the reforms initiated should make it possible to limit the number of such complaints, because the Government would scrupulously ensure that the persons concerned had exhausted all available domestic remedies.

5. In connection with the disparity between the number of complaints addressed to the Civil Rights Spokesman and that of cases which had been settled, it should be emphasized that certain complaints had been submitted before the Spokesman's appointment and that he was accordingly not competent to deal with them. In fact, most of the allegations related to disputes between individuals, in which the Spokesman was not necessarily required to intervene, his main role being to examine final decisions which normally concerned infringements of the law.

6. There were no longer any special commissions in Poland and the only special courts were the military courts, which were competent in cases concerning military personnel. Far-reaching changes had been made in the organization of the misdemeanour commissions because it had become apparent that they had served mainly to impose penalties on members of the political opposition. Those commissions now acted within the district courts and were subordinate not to the Ministry of the Interior, but to the Ministry of Justice. Members of the commissions were independent and were required to comply with the Code of Criminal Procedure in imposing penalties, generally for minor offences, and that had reduced the workload of the courts.

7. The law on the rehabilitation of persons convicted in Stalin's time provided that persons found guilty and victims of repression for having fought for the independence of the Polish State should be amnestied and compensated. Since several hundred cases of that type had had to be examined by the courts every year, it had been necessary to enact a law providing for the rapid cancellation of the penalties imposed on those persons, who had suffered for many years from the misdeeds of Stalinism. The law also applied to persons who had been convicted between 1944 and 1956, even in cases where those persons were no longer alive. As to persons who had suffered unjust repression since that period, in particular under martial law, a special procedure was applicable to them. She wished to point out, in order to dispel the concern of one member of the Committee, that that policy, which he had described as a "clean slate", concerned only convictions for lawful activities and not for infringements of the law.

8. Responsibility for transcribing provisions of international law in Polish law lay not only with the Senate Commission on Human Rights, but also with the Legislative Commission of the Diet, the Parliamentary Commission of Justice, the Constitutional Commission and the Senate Commission on Rights and Initiatives, all of which ensured in particular that the legislation drafted was in conformity with the provisions of the Covenant. The initial persistence of provisions such as article 270 of the Penal Code might have aroused some doubt about compliance with human rights and fundamental freedoms in Poland, but in the draft Penal Code which had already been submitted to the Minister of Justice by the above-mentioned commissions, that article no longer

appeared. In that connection, it should be pointed out that, in the case of Stanislaw Tyminski, to which reference had been made, the inquiry had not been continued.

9. Pursuant to the amendments made to the Constitution in December 1990 and other new provisions, the functions of the Public Prosecutor had been entrusted to the Minister of Justice, which enabled the Diet to exercise a certain control in that area and the Minister himself to influence the decisions of the courts in complete legality, without recourse to extraordinary procedures.

10. With regard to the appointment of judges, revolutionary changes, in the positive sense of the term, had been made within the context of the Constitution and the laws governing the organization of the ordinary courts, the Adminstrative High Court and the National Judicial Council. In order to dispel the concerns expressed about the danger of interference by the President of the Republic in the appointment of judges, it should be made clear that a new judge was nominated by the judges belonging to the court concerned, the candidature then being submitted to the National Judicial Council, which was composed of 15 judges elected by their colleagues, 4 deputies elected by the Diet and 2 senators elected by the Senate. The President of the Republic could appoint only one candidate endorsed by the National Judicial Council, and if he intervened in the procedure, it was simply in order to give it a more solemn character and to lend the judges a certain status.

11. With regard to the abolition of capital punishment, it would be recalled that to that end the deputies had, in 1989, submitted a bill which, after a first reading had been transmitted to a commission. Although the question remained controversial, the death penalty had been eliminated from the new draft Constitution and draft Penal Code. When the question had been finally settled in the domestic sphere, Poland would be able to consider acceding to the second Optional Protocol for the abolition of the death penalty. In any event, no person sentenced to death had been executed for a long time and no sentence to capital punishment had been pronounced for three years.

12. The Civil Rights Spokesman, to whom Mr. Ando had referred, shed light on many problems connected with the enforcement of legislation, particularly with regard to issuing passports, the activities of the misdemeanour commissions and conditions of detention. Since the Spokeman had taken up his duties in 1988, his activity had applied to the measures in force at that time, but today new provisions had been introduced offering possibilities of appeal via administrative procedures, since any judgement could now be reviewed by the Administrative High Court. Decisions taken concerning the right of asylum and permanent residence permits for foreigners could also be the subject of appeals. In addition, it should be pointed out that in Poland the bar was completely independent.

13. The problems of anti-Semitism and incidents such as those in which gypsies had recently been involved were not peculiar to Poland; they also occurred in other countries. In that area, prevention was not always

effective, but she could not accept that such attitudes should be termed traditional, since Poland's history provided an example of tolerance and respect for minorities.

14. As to the question of the treatment of detainees, in 1991, the Committee responsible for ensuring the implementation of the Helsinki agreements had transmitted to the Polish authorities a list of 93 cases of ill-treatment by the Polish police. The inquiry into that question had shown that there had in fact been 590 cases of that nature. Thirty-three of them had led to charges, and, in the other cases, no proceedings had been initiated. The Polish authorities systematically investigated all complaints of that nature, whether they were substantiated or not. Since March 1991, 17 police or prison officers had been charged for cases of that kind. In one case, the persons responsible had caused the death of a detainee. In order to deal with that very serious problem, new legislation establishing regulations concerning police activities had been enacted. Henceforth, if a policeman broke the law in a manner constituting infringement of human rights, he was liable to five years' imprisonment, in the same way as if he ill-treated a detainee or simply threatened him in order to obtain a confession. A directly superior officer who had given the relevant orders was also liable to the same punishment.

15. The CHAIRMAN said that the Committee had thus completed its consideration of section I of the list of issues relating to the third periodic report of Poland. He invited members to move on to section II, which read:

"II. State of emergency (art. 4)

(a) Please clarify under which circumstances martial law or a state of emergency can be proclaimed; the procedures to be followed; and the authority empowered to take such a decision. What rights can be derogated from during such a situation?

(b) Please elaborate on the powers of the police and the military in a state of emergency."

16. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the conditions in which martial law or a state of emergency could be proclaimed were defined in the Constitution and the law. Martial law could be proclaimed by the President of the Republic in all or part of the national territory if reasons of defence or external danger so required. A state of national emergency could also be proclaimed for a period of three months in the event of a threat to internal security or national disaster. It could be extended by a maximum of three months, with the agreement of the Senate and the Diet. The proclamation of martial law or a state of national emergency entailed the temporary suspension or limitation of certain fundamental civil rights in that it permitted house searches, the censorship of correspondence, monitoring of telephone or telex communications, suspension of exercise of the rights of association and assembly, and a ban on demonstrations. Persons over the age of 18 could be arrested if the authorities considered that they were liable to break the law. That provision applied both to Poles and to foreign nationals, unless the international instruments to which Poland was a party provided otherwise, for example, by specifically excluding foreigners from their scope.

17. When a state of national emergency was proclaimed in the event of a disaster, civil rights could also be derogated from through the imposition of certain obligations (personal service in rescue operations or compulsory vaccination, for example). Civil rights were also restricted in the event of the proclamation of a national state of emergency if internal security was endangered. The police forces could then take preventive action by questioning persons over the age of 14 who were behaving in a suspicious manner or were engaging in attempts to demoralize the population. Persons over the age of 18 could be arrested, tried and imprisoned when it was considered that, if they remained free, they would jeopardize the security of the State or break the law. Responsibility for such decisions lay with the provincial police commander. Persons detained under those provisions were subject to the same prison regulations as persons in pre-trial custody. Provincial police commanders could also restrict the movements of certain persons, expel them, forbid them to change their place of residence, or forbid the taking of photographs or video recordings. Once again, all those provisions were regulated by the Constitution and the National State of Emergency Act of 5 December 1983, as amended in 1989.

18. Mrs. HIGGINS thanked the Polish representative for giving very detailed information on the amendments to the legislation of her country in the context of the current situation and for admitting very frankly the problems which continued to arise. It was encouraging to see that enormous progress had been made since the Committee had considered Poland's previous report, which had elicited much more criticism.

19. She nevertheless found it somewhat disturbing that, under the state of emergency, a provincial police commander could order detention, a decision which was not judicial in nature and not susceptible of appeal to the courts. In order to conform to the provisions of international law on that question, were the Polish authorities considering removing that power from police chiefs and entrusting it to some other body?

20. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the law in question, which had been enacted in 1983, would certainly have to undergo far-reaching revision. Although detention decisions under a state of emergency were not subject to appeal to the ordinary courts, they could henceforth be appealed against to the Administrative High Court. It must nevertheless be admitted that those remedies were still insufficient.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

21. The CHAIRMAN invited the Polish delegation to reply to the questions in sections III and IV of the list, bearing in mind that question (a) of section IV had already been dealt with. The questions were:

"III. Non-discrimination and equality of the sexes (arts. 2 (1), 3, 24 and 26)

(a) Please provide information on any legal provisions governing non-discrimination and equality of the sexes.

(b) What measures are being taken to eliminate discrimination on the ground of sex, in particular with regard to access by women to some professions and posts and also with regard to salaries and wages (para. 38 of the report).

(c) Please clarify the scope of the exceptions mentioned in paragraph 105 of the report and provide information on the meaning of the term 'the Church and other religious entities' in that context.

IV. Right to life (art. 6)

(...)

(b) Please provide information on tangible results, if any, obtained through the activities of the ad hoc commission set up to consider approximately 100 cases of deaths in mysterious circumstances during the 1982-1988 period (para. 44 of the report).

(c) What measures have been taken to protect the right to life against environmental pollution?"

22. Mr. RYMS (Poland) said that, although Polish legislation prohibited any type of discrimination and, consequently, discrimination on grounds of sex, in practice everything was not perfect. Certain regulations had even been considered discriminatory. The Constitutional Court had thus ruled that a regulation governing admission to medical studies, which had given priority to men, had been discriminatory.

23. Statistics for 1990 showed that the percentage of women in positions of responsibility or holding high-level appointments was substantially lower than that of men. For example, 62 deputies out of 460 and 7 senators out of 100 were women. Among ministers, vice-ministers and departmental directors, only 13 posts were held by women; it should be noted that the Minister of Industry was a woman.

24. The figures showed that, for equal work, the average wage received by women was less than that of men. The obviously complex reasons for such discrimination were common to many countries. The Government had set up a special post of governmental attaché for cases concerning women and the family, with responsibility for studying problems with a view to proposing governmental policy proposals. The Polish authorities were aware that the situation must be improved, but current economic circumstances offered little scope for manoeuvre. The ongoing changes gave rise to many problems, not the least of which was unemployment. And the State's budget was very limited.

25. The 1989 Act relating to guarantees of freedom of conscience and religion gave foreigners and stateless persons rights equal to those of Poles, with two exceptions. First, the church authorities or the authorities of any religious association who wished to appoint a foreigner to an executive post were required to inform the Minister for Trusteeship, who simply made a recommendation concerning the candidate. If he expressed a reservation, the church authorities were free to take it into account or otherwise. The second

exception originated from the interpretation given to one article of the 1989 Act, under which the formation of a religious association was subject to the presentation of a declaration by at least 15 Polish citizens. In order to obtain legal personality, a religious association in course of formation must therefore have at least 15 Polish citizens as members, and that could give rise to objections. In practice, however, that had never happened.

26. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to the question raised in section IV (b), said that the ad hoc commission set up by the Diet to consider cases of deaths which might be attributable to officials of the Civic Militia or security services had no powers of investigation, but was entrusted with evaluating the results of the criminal proceedings concerning each of those cases. So far, the commission had dealt with 120 cases of unexplained deaths and had examined 115 of them, since the five others had already been under investigation by the Public Prosecutor at the time when the commission had been set up. In 24 of those 115 cases, the commission had established that there was no connection between the deaths and the activities of officials of the Ministry of the Interior. In the 91 other cases, it had formulated suggestions regarding the course of future action by proposing either that the case should be reopened if it had previously been dropped or that criminal proceedings should be instituted. In many cases, the commission had found that there had been serious negligence or hasty conclusions in the conduct of the investigations. Thus, in the case of the deaths of the miners killed in Upper Silesia on 17 December 1981, the authorities had accepted the a priori view that the police had fired in self-defence. The Parliament had endorsed the commission's proposal that proceedings should be instituted and had ordered the Public Prosecutor to carry out an investigation to identify those responsible. The Public Prosecutor was required to report on the results of his inquiry by 31 December 1992.

27. With regard to the environmental questions mentioned in subparagraph (c), the Polish authorities were aware of Poland's responsibility for the deterioration of the environment, as well as of the protection role it had to play because of its geographical position in Europe. They were beginning to understand the idea of "ecodevelopment". In that connection, a document on ecological policy had been adopted early in October containing recommendations on the measures to be taken to protect the environment. To date, however, the solutions which had begun to be put into practice still had not made it possible to halt the deterioration of the environment. There was a very close relationship between the country's economic situation and the effectiveness of environmental protection. Measures such as the conversion of the foreign debt into ecological investments, financial assistance from the World Bank and loans granted by the European Community and the 24 most industrialized countries were steps in the right direction. Legal solutions were not enough to abate pollution of the air and in the Baltic Sea and to protect fauna and flora, but they were essential and an act on the monitoring by the State of ecological conditions had been promulgated in 1990. It provided for penalties, particularly against industrial polluters. Factories had been closed down in accordance with that act.

28. Mr. FODOR requested information on Poland's position with regard to former Communist Party officials. Some new democracies in Eastern Europe had already taken measures to restrict the rights of former officials, especially in respect of employment. Had Poland done the same, and if so, what restrictions were envisaged?

29. Mr. SADI, referring to the question of the equality of the sexes, asked whether any distinction was made between the father and the mother with regard to the transmission of nationality to the children.

30. As to the right to life, he asked whether any cases of involuntary disappearance had occurred under the former regime. Since the right to life included the right to the protection of health, he also wished to know whether Poland had launched any information campaigns on AIDS and on means of preventing that disease.

31. Environmental questions seemed to have been very much neglected so far and, although measures had been adopted, it was open to question whether they would suffice to reverse the trend towards the deterioration of the environment.

32. Mr. HERNDL said that he had taken note with great satisfaction of the bill for the abolition of the death penalty referred to by the Polish delegation. Article 6, which enshrined the right to life, also covered the protection of unborn children. It was striking to note that the Polish authorities were dealing for the first time with the question of termination of pregnancy in their report. It would be interesting to have further information on the bill referred in paragraph 12 of the addendum (CCPR/C/58/Add.13) in order to see how it differed from the 1956 Act on admissible termination of pregnancy.

33. Mrs. SKORZEWSKA-LOSIAK (Poland) replying to the question concerning the attitude of the Polish authorities towards former Communist Party officials, said that that important issue had been fully discussed during the parliamentary election campaign which had just ended, but had not gone beyond that framework, and only some of the parties had mentioned it. Draft resolutions had been prepared on the issue, but the authorities did not plan to adopt any legislative provisions on it.

34. As to discrimination between men and women with regard to nationality, she explained that the Polish legal system made no distinction between the father and the mother as far as the citizenship of their children was concerned. The jus sanguinis principle prevailed and there was no discrimination on grounds of sex.

35. In reply to a question on the cases of disappeared persons in Poland, she explained that no case was known to the authorities.

36. With regard to termination of pregnancy, the report by Poland (CCPR/C/58/Add.10 and 13) drew attention to the problems which arose in that regard. She stressed that the Government had not taken any official position on that question and had merely informed the Parliament of the provisions

contained in the relevant bill which had been submitted. The question of termination of pregnancy was a very complex one, whether from the legislative, social or philosophical point of view, as had been amply demonstrated, moreover, by the public debate to which it had given rise. The previous Parliament had examined that question before 1989 without achieving any specific results. It had not adopted the bill submitted to it and the new Parliament would therefore have to take a decision on that question.

37. With regard to AIDS, she said that in recent years the Polish authorities had tried to make public opinion aware of the threat represented by that disease and to explain what preventive measures could be taken. They had adopted a number of measures and there were a great many publications on the subject in Poland. Persons suffering from AIDS were unfortunately the victims of discrimination by certain circles, which rejected them. Generally speaking, a broad campaign was under way in which the Ministry of Public Health and the Catholic Church were playing a leading role. The Catholic Church had also opened a reception centre for AIDS patients and there was an association which assisted them and also helped drug addicts.

38. Referring to the protection of the environment, she explained that 11 per cent of Polish territory was threatened by pollution because of the industrialization policy pursued by the former regime. For example, large industrial combines had been built without the proper precautions. Despite the obligation of enterprises to repair the damage caused, the injured persons had not always filed a complaint or claimed compensation, but had preferred an amicable settlement with the enterprise concerned. In some cases, the only solution would be to shut down enterprises which caused heavy pollution, but it should not be forgotten that such a measure would give rise to serious economic problems, particularly by increasing unemployment, and it would therefore be necessary to find carefully thought-out solutions for what was an extremely complex problem.

39. The CHAIRMAN invited the Polish delegation to reply to the questions raised in sections V and VI of the list of issues, which read:

"V. Liberty and security of the person (arts. 9 and 11)

(a) Please provide information on the impact of the process of reform of criminal law on the implementation of article 9 of the Covenant.

(b) What is the maximum length of pre-trial detention? Is there any provision for a regular review by a court of such detention?

(c) Please provide information on the composition, functions and activities of the misdemeanours commissions?

(d) What progress has been achieved in the work on the bill relating to the protection of mental health with regard to guarantees for the protection of the rights of persons confined in psychiatric hospitals?

VI. Treatment of prisoners and other detainees (arts. 7 and 10)

(a) With reference to the cases of ill-treatment mentioned in paragraph 48 of the report, please indicate whether investigations into these cases have taken place and, if so, whether any criminal or disciplinary measures have been taken against those found guilty.

(b) Are there any statistics about ill-treatment of persons remanded in custody? Have any particular measures been taken to prevent such ill-treatment?

(c) Please provide information on the number and nature of protests against abuses of authority by officials submitted under the procedure mentioned in paragraph 48 of the report.

(d) Please provide additional information on the conditions of detention, especially with regard to detention of juvenile offenders.

(e) Please comment on the statement in paragraph 75 of the report 'that the professional qualifications of many doctors working in prisons have declined and their attitude towards prisoners has not always been as it should be' and provide information on measures, if any, to deal with the problem.

(f) Please comment on the composition, powers and activities of the Prison Patronage Association."

40. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to the question raised in section V (a), said that the reform of criminal law had been undertaken immediately after the "round table" agreements. Thus, it was now possible to have recourse to the courts in cases of detention and the principle of compensation had been extended to cases of wrongful detention. Detainees also had to be informed of the reasons for their detention.

41. With regard to pre-trial detention, the bill proposing a new penal code which had been submitted to the Council of Ministers specified that only the courts could order pre-trial detention. The principles governing pre-trial detention and the conditions applicable to such detention had also been redefined. Under the proposed new provisions, only a court could order pre-trial detention for a period of more than three months. In exceptional and particularly justified cases, the prosecutor could order pre-trial detention for 24 hours at most.

42. In reply to the questions in subparagraph (b), she explained that the maximum length of pre-trial detention was not laid down by law in Poland. At present, while a case was under investigation, the court dealing with it could extend the duration of that detention beyond three months. Beyond six months, the decision was taken by a higher court and only the Supreme Court could order pre-trial detention for more than one year.

43. Under the proposed new code, while the investigation was still under way, the court could extend pre-trial detention for not more than three months. At

the request of the prosecutor, it could then extend it up to six months. A higher court could extend it up to nine months in order to allow the investigation to be completed.

44. In general, the maximum duration of pre-trial detention did not exceed 18 months, and two years in the case of murder. Only the Supreme Court could extend those periods if it felt it necessary for a psychiatric examination of the accused, for an investigation abroad, etc.

45. The proposed new rules also provided for the possibility of review by the courts of decisions relating to detention.

46. At each stage of the judicial proceedings, the detainee had an opportunity to apply for review. If the application was rejected, he could appeal the decision. Those were the solutions applied at present, but she explained that there were other proposals that went even further.

47. Replying to the question in subparagraph (d), she said that the bill relating to the protection of mental health prepared by the Minister of Justice was now ready for submission to the Council of Ministers. The relatively slow progress on that bill was primarily the result of efforts to improve some aspects of the text. The experts who had taken part in the drafting of the bill had adopted resolutely modern solutions, which would have important financial implications, such as free treatment and free medicines for the mentally ill, special protection for their employment contracts, a number of social benefits, etc., which made the bill unacceptable as it stood. The State could not bear such a financial burden and some of the solutions included in the bill would therefore have to be abandoned.

48. It should be pointed out that extended stays in psychiatric institutions were now governed by a Ministry of Health regulation dating back to 1952. New provisions were due to be enacted shortly on that question.

49. The limitation of the freedoms of persons confined in psychiatric hospitals was a very important problem. At present, the lawfulness of that type of confinement was monitored by the prosecutor, who could order the release of the person concerned in the event of unlawful commital.

50. With regard to section VI (a), she indicated that the Civic Militia and the security services had been disbanded. In addition, the Police Act of April 1990 contained provisions relating to the monitoring of the activities of the police. In cases where it had been established that officials had been neglectful in performing their functions, they had been dismissed. In some cases, criminal proceedings had been instituted and the trials were pending.

51. In reply to the questions in subparagraph (b), she indicated that the number of cases of ill-treatment of persons remanded in custody was estimated on the basis of the number of complaints filed by the victims. She wished to make it clear that the correspondence of detainees on that question was not subject to any supervision by the prison authorities.

52. In 1990, 414 complaints of that kind had been recorded and 11 of them had later proved to be well founded. Penalties had been applied against 21 Prisons Service Officers, 6 of whom had lost their jobs. To date, 367 complaints had been lodged in 1991 and 10 of them had already been declared well founded. The statistical services of the Ministry of Justice published regular data on that question.

53. One of the means which had been adopted to put an end to the ill-treatment of persons remanded in custody was the replacement of prison staff, which had begun in 1990. Over 7,000 employees of the Prisons Service had thus been dismissed. In addition, 176 high-ranking officials of the Prisons Service had been removed from office and 410 high-level posts had been assigned to other officials. The problem had been such that only 35 per cent of the present officials had been in their posts for over five years.

54. Referring to the question in subparagraph (c), she wished to add something to what she had already said. In 1990, over 8,000 complaints had been filed against police officers and disciplinary proceedings had been instituted in 4,000 cases; 3,200 officials had already been sentenced. In 1991, penalties had been imposed on 1,320 officials.

55. In reply to the question contained in subparagraph (d), she indicated that the reform of detention conditions was based on the information compiled by the Civil Rights Spokesman. There were also other reasons for that reform, including the fact that the number of detainees had dropped by half. At present, 56,000 persons were in prisons or penitentiary establishments in Poland, whereas, only one or two years previously, that figure had been over 100,000. New prison regulations had been adopted to govern detention. She stressed that standards relating to the amount of space for each detainee in cells were in keeping with international standards.

56. She also noted that, until 1990, persons could be placed in pre-trial detention in detention centres belonging to the Militia, with disastrous consequences both for the rights of the persons thus detained and for their conditions of detention. That measure was governed by a provision of the Penal Executive Code which had been in force for 20 years, even though it was an emergency provision. That situation was intolerable and, even though the new prisons under the authority of the Ministry of Justice were not ready to receive detainees, it had been decided that persons would no longer be placed in pre-trial detention in the militia centres. In addition, detention conditions had been improved inasmuch as the number of detainees had decreased and pre-trial detention was being applied less and less.

57. With regard to the professional qualifications of many doctors, to which reference was made in subparagraph (e), she confirmed that they were often not very good. Detainees had protested a great deal in that regard. The Civil Rights Spokesman had requested the opinion of specialists of the public health services and the complaints had often proved to be well founded. Forty per cent of the senior staff of the Prisons Service had been replaced, so that an improvement in the situation could be expected. In addition, Medical Chambers had been set up as self-managing bodies and the doctors employed in prison establishments were often subject to the supervision of those Chambers.

58. There had recently been a sharp drop in the number of complaints concerning prison medical services; the number had declined from 860 in 1990 to 299 as at 18 October 1991.

59. Referring to subparagraph (f), she pointed out only, in view of the late hour, that the Prison Patronage Association was a national entity which had been established two years previously and had 200 members. It assisted convicted persons in prison establishments on their release and also helped their families. An agreement concluded between the Ministry of Justice and that Association defined the modalities of their cooperation. The Association's representatives were allowed to enter prison establishments; they could freely contact detainees and could obtain information from the Prisons Service. In addition, the Association had a home where it housed detainees without resources on their release from prison and it operated a welfare service to help with housing and employment problems.

60. The CHAIRMAN thanked the Polish delegation for its replies and said that the Committee would continue its consideration of the third periodic report of Poland (CCPR/C/58/Add.10 and 13) at its next meeting.

The meeting rose at 6.20 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1104
31 October 1991

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE 1104th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 October 1991, at 10 a.m.

Chairman: Mr. POCAR

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Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-18152/3869B

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Poland (CCPR/C/58/Add.10 and Add.13) (continued)

1. The CHAIRMAN invited members who so wished to comment further on the replies of the delegation of Poland to the questions asked in sections V and VI of the list of issues.

2. Mrs. HIGGINS asked what was being done to prosecute members of the Civic Militia and security services who had been found guilty of abuses of authority. She would also like to know what action had been taken in regard to the training of officials having control over detained persons.

3. It was her understanding that the public prosecutor could authorize access to a person held in pre-trial detention, including by his lawyer, but that the family of the detainee had often been denied such access for lengthy periods. She would like to know whether the new legislation which was to be introduced would deprive the public prosecutor of such power to control access. Referring to question V (b), she considered that the maximum period of pre-trial detention was excessively long and wondered whether thought was being given to the possibility of reducing it. In 1990 42 persons had been held in detention pending trial for more than two years and 240 persons for more than 18 months. The issue of mental health should clearly not be left to the public prosecutor rather than to a court.

4. In paragraph 67 of the report (CCPR/C/58/Add.10) there was a reference to "involuntary offences"; what were they?

5. Mr. WENNERGREN asked whether the remedy provided in article 9 (4) of the Covenant, whereby a detainee could take proceedings before a court to establish the lawfulness of his detention, was available to anyone detained for any lawful reason.

6. Article 9 (3) of the Covenant provided that anyone arrested or detained on a criminal charge should be brought promptly before a judge or other officer authorized by law to exercise judicial power. Under that provision it was clearly the responsibility of the detaining authority, not that of the detainee, to initiate action. What was the position of Polish legislation on that point?

7. Mr. PRADO VALLEJO, referring to article 7, said that there were problems with police investigations in every country. He would like to know whether there had been substantial changes in the composition of the police in Poland. Were members of the former police force, who had committed so many acts of violence, continuing to serve in the police? Had the human rights of detainees been explained to them and were there plans to reform the police?

8. He would also like to know how places of detention were organized and whether there were minimum accommodation standards.

9. Mr. HERNDL said he was aware that the Polish Government had done its best to ensure that, in cases of possible maltreatment in detention, there was an appeal procedure and an effective remedy; he was also aware that Poland had ratified the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, under which it was a clear obligation that testimony obtained as a consequence of maltreatment should not be used in court. In the second periodic report of Poland, under article 7 and also under article 14, it had been mentioned that the testimony of the defendant or witnesses and declarations made under circumstances which precluded voluntary and unrestrained expression should not constitute valid evidence. He wondered whether that provision was still being applied.

10. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to the questions raised regarding changes in the regulations concerning the police and prison officers, said that, starting in 1989, the Ministry of the Interior had begun to change the professional status of the police. The police were now headed by civilians and were subject to monitoring by a central body; they were under the control of a Commander-in-Chief who was accountable for police conduct to the Minister of the Interior. With regard to the professional training of police officers, the first step was to ascertain whether a candidate for a police post was suitable for employment; recruits then went through a three-month training period during which they were made aware of the rights and guarantees of detainees. The composition of the police force had changed substantially. The previous force had been dissolved by a law under which the former security services had also been disbanded. All officers who had been found to have infringed the law had been discharged. It was true that some transgressors might still be working in the police force but it was hoped that the new approaches and regulations would constrain such people to pursue their activities in a proper form.

11. There had been a great change in the prison staff in 1990, when professional training courses had been organized for 2,000 persons: a further 1,400 staff members had followed such courses in the first half of 1991. In addition, 3,900 persons had taken specialized courses. She hoped that those facts would demonstrate the importance that the Minister of Justice attached to such training.

12. The Government was trying to limit the work of prison staff to a protective role; civilians with appropriate training were also being employed in such establishments, including pyschiatrists and specialists on rehabilitation from the University of Warsaw. The prison services in Poland were headed by a scientist trained in social reintegration and rehabilitation. Broad international contacts were being developed and recently an international conference for European prison officers had been held in Poland in which prison officers from Sweden, Norway and Denmark had participated. Rules and regulations applicable to those serving sentences in Poland had been brought into line with international norms and standards.

13. With reference to the right of a suspect to consult his lawyer, the situation was that he could do so without the presence of other persons other than a possible observer representing the public prosecutor. It had now been agreed that the regulation on that point should be amended to give the suspect the right to consult his lawyer without anybody at all being present.

14. The period of pre-trial custody had in some cases been too long, with the result that a normal maximum, to include the period of investigation prior to the court proceedings, had been established. In some cases, however, the period of pre-trial detention might have to be extended beyond the current ceiling of 18 months or, in the case of murder suspects, two years. Such prolongations, which might be necessary because of the mental health of the accused or because of the need to conduct inquiries abroad, would be for a specified time and would be decided by the Supreme Court. She agreed that prolongation of pre-trial detention must be avoided where there were no real grounds. Regulations to that effect were being prepared, bearing in mind that a sentence of imprisonment was not the same thing as remand in custody.

15. She shared the view that there was an urgent need to amend the regulations for the protection of mental health with a view to ensuring that persons in psychiatric hospitals were treated in accordance with generally accepted international norms. The initiative for placing mentally ill persons in hospital lay with the courts which were responsible for examining their cases. She would draw the attention of the Polish authorities to the questions which had been asked in that respect. The law on the matter was to be discussed in Parliament in the near future.

16. In cases of detention, the prisoner always had the right of recourse to a court unless that right was relinquished voluntarily.

17. The rules on interrogation had not yet been changed. Under article 156 of the Code of Criminal Procedure a person interrogated must be free to speak and any explanations by him must be given in circumstances of freedom, failing which the information would be inadmissible in court. The regulations were very clear on that point. In an increasing number of cases, the court had not accepted evidence obtained at a time when freedom of expression had not been guaranteed. Such rulings established the manner in which the police should conduct themselves in future; they must give up improper methods. Under new regulations, a policeman found to have infringed the law or to have been derelict in his duty could be sentenced to up to five years' imprisonment. A policeman who used physical force, threats or mental ill-treatment in order to obtain evidence was liable to a similar sentence.

18. The conditions in which prisoners were held in police cells and in prisons had improved considerably. A report of the Civil Rights Spokesman had noted that in the past there had been a great deal of negligence in that respect and many changes had therefore been introduced. A substantial number of prisons were very old, dating back to the nineteenth century, thus rendering the reform process more difficult. In future no prisoners could be remanded in police cells for longer than 48 hours, after which they must be kept in prisons under the control of the Ministry of Justice. The legal reforms had led to a 50 per cent decline in the number of detainees, from about 100,000 inmates to approximately 50,000 in October 1991. International standards were being applied in cases of pre-trial detention, which was subject to very careful monitoring by personnel who had free access to prisons and jails. The Prison Patronage Association could also enter places of detention freely, while the Civil Rights Spokesman also played an active role.

19. The CHAIRMAN invited the Polish delegation to take up sections VII and VIII of the list of issues.

VII. Right to a fair trial (article 14)

(a) What changes have been introduced in the draft code of criminal procedure relating to guarantees of a fair trial?

(b) Please provide information on the scope of jurisdiction of the military courts and on their position in the court system in Poland.

(c) Please provide information on the current schemes for legal aid.

(d) Please comment on the experience to date of the National Judicial Council (para. 87 of the report).

(e) With reference to paragraph 29 of the report, please provide information about the size of the backlog of cases before the ordinary courts.

VIII. Freedom of movement and expulsion of aliens (articles 12 and 13)

(a) With reference to paragraph 17 of the report, please clarify what is the period of time needed, under normal circumstances, for the issuance of a passport; what costs are incurred; and what administrative formalities are to be followed.

(b) Please provide further information with regard to the difficulties experienced with regard to the securing of permanent residence of Poles domiciled in the Soviet Union (para. 86 of the report).

(c) Please provide information on the law and practice of expulsion of aliens.

20. Mrs. SKORZEWSKA-LOSIAK (Poland) said that much of what she had already said on other matters was also relevant to guarantees to a fair trial (question VII (a)). The most important change affecting that issue was the provision made in the draft code of criminal procedure for wide-ranging intervention by the courts in the pre-trial examination of cases. Under that procedure, the courts could question the accused person and witnesses, and the accused person himself might request a court hearing. The courts alone had the right to remand a person in custody and the accused person was heard by the court before it took that decision. Complaints referring to the period of pre-trial examination were dealt with by the courts. In addition, an accused person could appeal against a failure to investigate his case. Any change in the charges brought by a prosecuting counsel would have to be submitted to the court. The powers of defence counsel had been broadened and those of prosecuting counsel reduced. Any court inquiry must be attended by defence counsel, and greater latitude was given to the defendant, for example if he did not speak Polish or in other mitigating circumstances. The judge pronounced his decisions in open court in the presence of all the parties concerned. Court proceedings were no longer inquisitorial but followed a procedure in which questions could be asked by the prosecution, the defence, the defendant and the judge, in that order, which was designed to minimize

interference in the investigation by the court. The legal reforms now before the Polish Parliament provided for the introduction of a system of appeal which would open the way to quashing a judicial decision that had the force of res judicata and would thus guarantee a defendant's rights to the due process of law.

21. With regard to question VII (b), the military courts, as mentioned earlier, were the only special courts in Poland; their purpose was to provide the judicial machinery to deal with the special aspects of the military environment. There were three levels of military court: barracks and district courts and a supreme court. The district courts dealt with appeals from barracks courts and tried serious cases. In cases involving officers, appeals were made to the Supreme Military Court. The procedure for the appointment of military judges was the same as that for civil judges. The new draft legislation contained guarantees of the independence of military courts. At present, crimes against the interests of the State were tried by military courts, but that would no longer be the case under the proposed new Code of Criminal Procedure; military courts would in future be confined to the trial of military offences only.

22. To answer question VII (c), legal aid was provided by lawyers and legal advisers, whose respective professional associations were both independent of the State. About 4,000 lawyers were currently practising, 3,330 in organized groups and 600 in private offices. Lawyers were organized into 25 legal chambers; the management of matters relating to the profession was dealt with by a Supreme Council elected by the lawyers' National Congress. There were approximately 16,000 legal advisers organized into 19 professional chambers; matters relating to the profession were handled by a National Council elected by the profession's National Congress. The possibility of merging the two groups into a single professional association had been raised in the previous Parliament, where that step had been considered appropriate in view of the far-reaching reforms being made to the legal system. The two branches of the legal profession were themselves undecided on the merits of the proposal, which would be brought before the next Parliament for discussion and decision.

23. With regard to question VII (d), to add to the information she had already provided when speaking of the appointment of judges, the National Judicial Council, which had been established by law in December 1989, was a body consisting of 26 members representing different branches of the judiciary and elected representatives. The presidents of the Supreme Court, the Supreme Military Court and the Administrative High Court, together with the Minister of Justice, were ex officio members of the Council. Elected members of the Council were judges from the various types of courts as well as members of the Diet and the Senate. The President and Vice-President of the Council were elected by its members from among themselves. The current President was the President of the Supreme Court. The chief function of the Council was to consider applications for posts in the judiciary. In 1990, it had considered 1,380 applications and had recommended the appointment of 861 persons. Recommendation by the Council was a necessary condition for appointment as a judge. In addition, the Council considered requests from judges for assignment to another court and for extension of service beyond the normal retirement age of 65 years. It also gave rulings on questions of professional ethics and on other matters relating to the judiciary.

24. The backlog of cases mentioned in question VII (e) was not excessive, but could usefully be reduced. The causes of the backlog were the radical changes being made in the organizational structure of the courts and the judiciary. In 1990 a three-level system of courts had been introduced in preparation for the subsequent establishment of a system of appeal. A further cause of the backlog was the increased powers which the courts in Poland had acquired over the past two years, for example to deal with matters relating to the basic rights of individuals and other matters previously outside their jurisdiction. The backlog was a problem that the judiciary itself would have to resolve, the Ministry of Justice having only a narrow administrative function in the matter of court proceedings. Furthermore, the Ministry had no wish to extend its limited range of action in the matter since it was concerned to safeguard the independence of the courts. The pressure on the courts was increasing; between 1989 and 1990 the number of civil cases had gone up by 3 per cent, labour law cases by 35 per cent and social security cases by 30 per cent. The average time taken for proceedings in criminal cases heard in district courts had increased to two months, and for other courts and other types of cases it varied from two to five months. In cases where court proceedings appeared excessively dilatory, the Ministry of Justice took the matter up with the presiding judge. It was hoped that as the radical reforms in the legal system and the judiciary were completed the courts would return to full effectiveness. To illustrate the pressures on the system, she pointed out that in her two years at the Ministry of Justice over 200 new laws had been adopted by Parliament.

25. Mr. RYMS (Poland), replying to question VIII (a), said that under the new Passport Act of 1990 passports were now issued by the voivodships (provincial authorities) and not the police as had formerly been the case. Under the Code of Administrative Procedure, the time taken to issue a passport should not exceed one month from the moment of application, and in emergencies, a passport could be issued within three days. No complaints of backlogs or excessive delays had been received and many provincial offices issued passports within two weeks of application. A passport was valid for 10 years and remained in the possession of the holder. Applicants had to complete a brief questionnaire, submit two photographs and pay a fee of 300,000 zlotys, or 150,000 zlotys in the case of a pensioner, student, schoolchild, veteran, or person receiving social security. For the sake of comparison, average monthly earnings were 1,900,000 zlotys.

26. In answer to question VIII (b), the difficulties mentioned in paragraph 86 of the report had principally occurred in 1989 and had been virtually over by 1990. They had been chiefly due to the sheer numbers of Soviet citizens of Polish origin applying for permanent residence in Poland and also to the fact that applications had been submitted within Poland by persons who had entered the country as tourists. The relevant agreement between Poland and the Soviet Union stipulated that applications for permanent residence in Poland were to be made at Polish embassies or consular offices before crossing the border into Poland. Decisions made by the Soviet authorities were also based on that agreement and had also caused difficulty and delay. In all, 20,000 foreigners had been granted permanent residence in Poland. In 1991, 1,600 applications for permanent residence had been

received, of which over a 1,000 had been granted, 37 had been rejected and the remainder were still being processed. The grounds for rejection were that the person concerned had nowhere to live in Poland and no source of income.

27. Expulsion of aliens (question VIII (c)) was governed by the Aliens' Act. That Act had been promulgated in 1963 but had been frequently revised since then, the latest amendment being in September 1991. Expulsion of an alien from Polish territory was ordered if there was clear proof that the person concerned had acted against the interests of Poland, had been convicted of an offence, had infringed Customs regulations or posed a threat to law and order in a manner specified in the Code of Administrative Procedure. The expulsion order was signed by the voivod (provincial governor); appeal could be made to the Ministry of the Interior and a complaint brought before the relevant administrative court. The amendment of September 1991, provided that, in cases where an alien refused voluntarily to comply with an expulsion order, the person concerned might, for organizational and technical reasons, be detained at an observation centre. Should that person leave the centre without sufficient reason or refuse to follow the rules applicable there, he might be remanded in custody for a period not exceeding 48 hours, or detained for a period not exceeding 90 days until he could be expelled. Appeals against expulsion orders and detention could be made to the ordinary courts.

The meeting was suspended at 11.35 a.m. and resumed at 11.50 a.m.

28. Mr. AGUILAR URBINA, referring to question VII (a), asked whether the new legislation contained any rule guaranteeing the right not to be compelled to testify against oneself or confess guilt, as enshrined in article 14 (3) (g) of the Covenant.

29. Mr. LALLAH said that he was impressed by the extensive reforms which had been made in the fields of legislation and judicial administration, with judges becoming much more independent. He had, however, been surprised to hear that judges had the right to question accused persons, which seemed a clear violation of article 14 (3) (g) of the Covenant. He wondered whether the Polish delegation had in fact meant that judges had the right to question witnesses. With all the changes taking place in Poland, he strongly recommended that the Polish delegation should encourage its judicial personnel to make a systematic study of the jurisprudence of the Human Rights Committee under the Optional Protocol.

30. Mr. MYULLERSON, also referring to article 14 of the Covenant, asked for clarification of the composition of the various types of courts. He also inquired whether there was trial by jury and what was the role of the assessors referred to in paragraph 89 of the report. Lastly, he would like to know whether, under the new Code of Criminal Procedure, the accelerated procedure referred to in paragraph 93 of the report and the simplified procedure referred to in paragraph 96 had been abolished.

31. Mr. ANDO asked whether judges in the military courts required special qualifications. He also wondered whether any legislation deemed unconstitutional by the Constitutional Court had any effect between the time it was pronounced unconstitutional and the time that action was taken by the legislature to either amend or repeal it.

32. Mr. EL SHAFEI asked for further information about the Arab refugees referred to in paragraph 86 of the report: how many had there been, what was their nationality, had they formerly been resident in third countries, and had they come to Poland under the auspices of UNHCR?

33. Mrs. SKORZEWSKA-LOSIAK (Poland) said that, under the new procedures embodied in the Code of Criminal Procedure, judges could put questions to accused persons after those put by other participants in the trial, while accused persons had the right to refuse to make statements. In those respects, there had been no major changes between the old and the new system. She fully agreed that it was in Poland's interests to publicize the jurisprudence of the Committee in order to promote a better understanding of the Covenant and ensure compliance with it.

34. In reply to Mr. Myullerson, the composition of the courts varied according to the type of proceedings. A court of first instance was presided over by one professional judge and two elected, non-professional assessor judges except in cases which might carry the death penalty, when there would be two professional judges and three assessors, and appeals cases, when there were always three professional judges. Under the simplified procedure, which was used only for straightforward cases carrying a light penalty, the hearing might be conducted before only one judge. Civil cases were usually heard by one professional judge and two, non-professional assessor judges. The simplified procedure could not be used where the accused was already in prison or was a persistent offender. The accelerated procedure had been applied to persons caught in flagrante delicto, who were brought before the court within 48 hours of arrest. There had been great reservations, however, concerning that type of procedure because of the limited opportunities of defence which it afforded. Under the new arrangements, the accelerated procedure had been abandoned.

35. Appointments to the post of military judge were made on the same basis as for the ordinary courts, but candidates had to be career officers.

36. In cases where the Constitutional Court found a particular provision of the law to be unconstitutional, the matter was referred to Parliament, which could overturn the decision of the Constitutional Court only by a two-thirds majority. Any proceedings conducted on the basis of provisions which were subsequently challenged could be reopened.

37. With regard to the refugees from Arab countries received in April 1990, she believed that they had numbered several hundred persons who had been attempting to reach Sweden via Poland. The majority had been Yemenis and some had been Ethiopians. If the Committee so desired, she would reply in greater detail at a later stage.

38. In reply to an earlier question by Mrs. Higgins, "involuntary offences" were offences that were committed unintentionally or even through negligence, and could range from the sale of stolen property to the killing of another motorist in a traffic accident. The sentences given to the perpetrators of such offences were lighter than those imposed for more serious offences, and the conditions of detention were less rigorous - for example, greater freedom was allowed, and possibly also contact with the outside world.

IX. Right to privacy (article 17)

With reference to the cases of unlawful opening of correspondence, telephone-tapping and bugging, mentioned in paragraph 102 of the report, please indicate whether any investigations into these cases have taken place; whether any criminal or disciplinary measures have been taken against those found guilty; and what measures have been taken to eliminate such devices and the recurrence of such practices.

39. Mrs. SKORZEWSKA-LOSIAK (Poland) said that in the cases of telephone-tapping and bugging referred to in paragraph 102 of the report, proceedings had been initiated but then shelved after it had been ascertained by experts that the devices involved had not been used. Bugging devices had also been discovered in premises used by Solidarity during the 1989 presidential election campaign: the district court had closed the proceedings but, after a special appeal had been made by the Ministry of Justice, the Supreme Court had overruled the district court's decision, and the case was to be reviewed.

X. Freedom of religion and expression (articles 18 and 19)

(a) Please elaborate on the legal restrictions that have been placed on individuals or groups in expressing religious beliefs on grounds of public safety, order, health or morals, or the rights and freedoms of others (paragraph 109 of the report).

(b) What is the length of community service as compared to the length of military service (paragraph 116 of the report)?

(c) Please provide information on progress achieved with regard to the implementation of the rights and freedoms provided for under article 19 of the Covenant, in particular in the light of the reform of the Penal Code and the criminal law (paragraph 126 of the report).

(d) What has been the experience to date with the implementation of the Press Act as amended by the Act of 11 April 1990?

(e) Paragraph 123 of the report states, inter alia, that "inciting others to commit offences or praising others for having committed offences" is prohibited. Paragraph 128 states that the Press Act is now in force. Does that mean that the aforementioned prohibition has been superseded?

40. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to question (a), said that there were no restrictions on religious belief or worship or on associations formed for that purpose.

41. As to question (b), military service lasted 24 months, whereas community service lasted 36 months. Under an amendment to the law, which had already been approved but had not yet come in force, military service would be reduced to 18 months and community service to 24 months. Graduates performed nine months' military service.

42. With regard to question (c), the information already given was probably adequate, unless the Committee particularly wanted additional details.

43. Concerning question (d), the elimination of censorship had resulted in the publication of a large number of new magazines and newspapers reflecting a wide range of opinions, many of them controversial. During the first nine months of the year, 36 libel cases had been brought against journalists. Such actions were only to be expected on the path to normality because the abolition of censorship reflected the philosophy underlying the changes in Polish legislation: people would henceforth be expected to assume responsibility for their words and deeds.

44. With regard to question (e), the Control of Publications and Productions Act had been repealed, thereby ending preventive censorship, but inciting others to commit offences and praising others for having committed offences was now punishable under the Code of Criminal Procedure.

XI. Freedom of assembly and association (articles 21 and 22)

(a) Please provide information on the composition and powers of the administrative bodies which are competent to monitor the activities of associations.

(b) What are the relevant legal provisions governing registration of associations (paragraph 24 of the report)?

(c) Please provide information on the right of members of the police force and prison service to form trade unions (paragraph 152 of the report).

45. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the authority competent to deal with the monitoring of activities of associations was the provincial governor. He reviewed applications for registration submitted by associations, whose officials could be asked to produce their statutes, regulations and other documentation. The administrative authority could revoke any provision not in conformity with the statutes of the association and could ask a court to dissolve the association if it infringed the law, if its numbers fell below the level required by law, or if it had no leadership.

46. In reply to question (b), she said the registration of associations was governed by ordinary law.

47. On question (c), there was only one union which members of the police could join; they did not have the right to strike. Neither frontier guards, nor officials of the Office for the Protection of State Officials, nor civil servants nor professional soldiers had the right to join trade unions. The law governing the prison service contained no regulations on the trade union rights of prison officers but under the Collective Disputes Act they had no right to strike. A prison officers' union had been registered on 10 September 1991.

48. Mrs. HIGGINS, referring to article 17 of the Covenant and the information provided in paragraph 102 of the report, noted that the monitoring of correspondence and the use of technical means to obtain information in a clandestine manner required the prior authorization of the Government Attorney, which was given at the formal request of the Minister of the Interior. In her opinion, such intervention in the normal right to privacy as

might at times be necessary should be ordered by a court rather than by the prosecution or the executive. The Committee's general comment on article 17 of the Covenant might be particularly pertinent in that regard.

49. On article 19, she noted with interest that the regulations specified in paragraph 123 had been repealed and observed that it would not normally be regarded as legitimate intervention to hold a person legally responsible for having exercised his freedom of speech with respect to the independence and territorial integrity of Poland or for insulting, mocking or ridiculing the constitutional system or attacking the constitutional principles of the foreign policy of Poland or its alliances.

50. Mr. MYULLERSON said that with all the drastic changes that had been made, it was difficult to know exactly what provisions remained in force, particularly since the report reflected the situation as it had existed more than a year earlier. He, too, was concerned about paragraph 123, which described a number of prohibited actions in the exercise of freedom of speech and freedom to express ideas in publications and productions. Some of those prohibitions, if still in force, could represent a violation of article 19 of the Covenant. Many journalists and academic writers felt obliged to attack accepted principles and to urge their replacement.

51. Mr. PRADO VALLEJO, referring to article 19 of the Covenant, asked whether there was any legislation in force for the control of television broadcasting in Poland. Did the State intervene in that area, and if so, in what manner?

52. He further asked how the term "very serious crimes" in paragraph 102 should be interpreted.

53. He shared the concern expressed by Mrs. Higgins and Mr. Myullerson with regard to paragraph 123. He asked what was meant by the phrase "attacking ... the feelings of non-believers" in the context of the prohibitions set forth in that paragraph.

54. Mr. WENNERGREN asked whether telephone-tapping and bugging were among the "technical means to obtain information in a clandestine manner", to which reference was made in the second sentence of paragraph 102. In such cases, it would normally be a court that would be empowered to decide on the use of such advanced technical methods. If telephone-tapping and bugging were permitted, had they been legalized by the Police Act of 1990? When he had asked a similar question five years earlier, the Polish delegation had replied that there was no legal authorization for their use, but it was possible that the situation had changed with the adoption of the new Act. If such use was permitted, what was its purpose?

55. Article 19 of the Covenant provided not only for the right to freedom of expression but also for the right to freedom to seek, receive and impart information. If a citizen had the right to seek information, there should be a corresponding obligation on the authorities to provide such information when requested. To what extent did such an obligation exist in Poland?

56. Mr. EL SHAFEI noted that religious faiths were excluded from the scope of the Associations Act but were covered by the new Act of May 1989. The latter,

however, concerned only the attitude of the State towards the Roman Catholic Church. It was stated in paragraph 112 of the report that provisions corresponding to the provisions of the Act which applied to freedom of conscience and religion existed in all laws concerning particular churches or faiths, in conformity with the principle of the equality of all faiths. He asked what laws currently regulated the freedom of religion in Poland. Was Catholicism accorded a special status as the State religion or were all faiths dealt with on an equal footing?

57. Mr. ANDO, referring to article 19 of the Covenant, associated himself with the points raised by Mrs Higgins, Mr. Myullerson and Mr. Prádo Vallejo. With respect to the prohibitions under the Control of Publications and Productions Act, referred to in paragraph 123, he noted from paragraph 128 that the Act of 11 April 1990 had repealed that Act and amended the Press Act. He therefore wondered why the prohibitions shown in paragraph 123 had been listed.

58. He asked whether the Polish people could now freely obtain foreign books or periodicals or whether the import of such publications was still restricted. Were foreign correspondents allowed to contribute articles to Polish newspapers or periodicals?

59. Miss CHANET drew attention to article 21 of the Covenant and paragraph 28 of the addendum to the report (CCPR/C/58/Add.13) which stated that, under the Act of 5 July 1990, the right to hold meetings was subject only to the restrictions specified by the law which were necessary for the protection of State security, public order, health or morals and that the administration of the commune, which must be informed of the organization of a public meeting, could prohibit such a meeting only if the purpose of the meeting or of its organization was contrary to the Public Meetings Act or violated the provisions of the Penal Code or if the organization of the meeting might constitute a serious danger to human life or health or to property. Paragraph 136 of the main report (CCPR/C/58/Add.10) referred to the Associations Act, article 1 (2) of which reproduced the permitted restrictions provided for in article 22 (2) of the Covenant concerning the right to freedom of association. In relation to articles 21 and 22 of the Covenant, she wished to know what criteria were used to determine the restrictions necessary for the protection of public order and in what specific cases a meeting had been prohibited.

60. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the report covered the legal developments that had taken place in Poland during a period of major change. The information in paragraph 123 was given in order to provide the background to the amendments that had been made in the Act of 29 May 1989. Censorship had been completely abolished, and the restrictions described were no longer in force. The liberalization of legal restrictions also applied to the responsibility of authors under the Penal Code.

61. Television broadcasting was still a State monopoly, but an Act on private television and radio broadcasting, to which the Senate had proposed a number of amendments, had been debated in Parliament. The only parts of the Act so far adopted related to permits for radio and television transmitters. On the right to seek information, anyone who was refused access to such information had the right to appeal to an administrative court.

62. The prohibition against attacking religious beliefs or the feelings of non-believers had been a provision of the Control of Publications and Productions Act, which had been repealed. The question of telephone-tapping and bugging was dealt with in article 19 of the Police Act, which covered activities not regulated under the Code of Criminal Procedure. Such activities, which were subject to severe restrictions, were carried out by the police and were designed to prevent the commission of offences against the life or security of the person, which were also punishable under international agreements. They were authorized only with the permission of the public prosecutor or at the request of the Minister of the Interior. The public prosecutor was also the Minister of Justice.

63. The control and the monitoring of publications were regulated by the Code of Criminal Procedure. Guarantees and safeguards were provided in the new regulations and the courts were able to exercise greater supervision over monitoring activities.

64. Religious associations were covered by the Act of 1989 guaranteeing freedom of conscience and belief, except in cases where a special law existed with respect to specific religious associations. There was no discrimination as between such associations, although there were some divergences with respect to the appointment of aliens as church leaders. There were some provisions that related both to the Roman Catholic Church, which had existed in Poland for many hundreds of years, and the Orthodox Church. An Act with respect to those churches had been promulgated in 1991 with provisions similar to those of the Act concerning freedom of conscience and belief. Others were being prepared, and the question of church property, which had earlier been nationalized, was also being dealt with. An Act concerning the Evangelical Church, which was the third largest church community in Poland, was also being prepared. Sixty-six religious communities were registered, some of them with only a very small number of adherents. It was difficult to legislate individually for each of them, but all were guaranteed freedom of conscience and in any case had expressed no desire for separate legislation. Catholicism was not a State religion, although it was the religion of 90 per cent of the population.

65. The restrictions to which Miss Chanet had referred were provided for in international law as well as domestic law. They were interpreted in the context of national jurisprudence. The repetition of the provisions of the Covenant in national legislation helped in incorporating them into the national legislation. The Administrative High Court had ruled in 1983 that administrative decisions based on general clauses had the same legality as others, and that an administrative body basing itself on such general provisions must apply them to the rights and freedoms of the individual. The inclusion in the national law of the general provisions of the Covenant thus served to protect the rights and freedoms of the individual.

66. The prohibition of meetings was severely restricted, and any exceptions were subject to correct interpretation by the courts in accordance with their jurisprudence. There was no restriction on the import of foreign publications, which were freely available on news-stands. Foreign correspondents could operate without any restriction.

The meeting rose at 1.10 p.m.

UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1105
26 December 1991

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Forty-third session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1105th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 October 1991, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1105/Add.1.

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GE.91-18157/4066B

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Poland (CCPR/C/58/Add.10 and Add.13) (continued)

1. The CHAIRMAN invited the members of the Committee to continue their consideration of the third periodic report of Poland (CCPR/C/58/Add.10 and Add.13).

2. Mrs. HIGGINS said she would like to clear up any misunderstanding that might have arisen concerning questions raised at the previous meeting on the prohibitions listed in paragraph 123 of the report (CCPR/C/58/Add.10). The Committee had clearly understood that the provisions banning the various activities listed in that paragraph were no longer in force and had already become part of Poland's history. However, the question remained whether those activities, considered at the time to be offences - which would explain the existence of censorship on a preventive basis - were still violations under the provisions of the Penal Code. If so, that would mean that significant limitations on freedom of expression persisted in Poland.

3. Mrs. SKORZEWSKA-LOSIAK (Poland) replied that the activities to which Mrs. Higgins had referred were in fact criminal offences, for the Code of Penal Procedure had unfortunately not yet been amended regarding that question. She would like to point out, however, that there had not been any convictions on those grounds. Nevertheless, it was quite obvious that activities such as incitement to murder should be punished. A broad general revision of the Penal Code was currently taking place, and the changes made would undoubtedly resolve that problem satisfactorily.

4. The CHAIRMAN invited the Polish delegation to reply to the questions raised in sections XII and XIII of the list of issues, which read:

"XII. Right to participate in the conduct of public affairs (art. 25)

What is the current status of the law on political parties?

XIII. Rights of persons belonging to minorities (art. 27)

(a) Please provide information concerning ethnic, religious and linguistic minorities in Poland and regarding measures taken to guarantee their rights under article 27 of the Covenant.

(b) Please provide information on the composition and powers of the National and Ethnic Minorities Commission.

(c) What is the situation of gypsies in Poland?

5. Mrs. SKORZEWSKA-LOSIAK (Poland), replying to the question contained in section XII, said that the activities of political parties were governed by a law enacted in 1990. A party acquired legal personality once it was entered in a kind of register deposited with the provincial court in Warsaw.

In 1990, 40 parties had been registered, and only one had not been authorized, because it had not furnished the required documents. During the first six months of 1991, the competent authorities had received 51 applications for registration, and in only one case had the necessary documents not been provided. The Constitutional Court was the only body empowered to refuse to register a party, and then in only two cases: (1) if the future party's activities aimed to change the current constitutional order by force, and (2) when the leaders of the future party sought to use violence in public life.

6. In reply to the questions raised in sections XIII (a), (b) and (c), she said there were numerous ethnic minorities in Poland, representing a total of 800,000 persons. There were 300,000 Ukrainians. 250,000 Byelorussians, 200,000 Germans, 20,000 Lithuanians and 15,000 Jews.

7. Generally speaking, the policy of the Polish authorities was based on internationally recognized standards for the protection of the rights of minorities and it took account, in particular, of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE.

8. At one time the minorities had wished to be covered by a separate law. Such a measure would have been difficult to implement, for there were provisions relating to minorities in several different laws. The new law on education, for example, made it possible for pupils who were members of ethnic minorities to preserve their identity and learn their mother tongue, history and culture. The prevailing trend currently seemed to be towards accompanying legislative provisions by constitutional guarantees to protect the interests of minorities. The various draft constitutions deposited contained a series of specific measures aimed at defending the rights of minorities. Those measures dealt in particular with the prohibition of discrimination, the possibility of freely choosing to belong to a minority and aid given to ethnic minorities for preserving their cultural, historical and linguistic heritage.

9. She drew the Committee's attention to two important measures, namely the repeal of a 1952 provision changing the spelling of the names of people belonging to ethnic minorities, and the fact that those minorities were now entitled to days off to celebrate their religious holidays, even if those holidays did not coincide with the official holidays in Poland.

10. The authorities were fully aware that the protection of minorities required not only an adequate legal framework, but also affirmative action by the State. That was why the National and Ethnic Minorities Commission had been set up. It was chaired by the Minister of Culture and the Arts and was made up of several other ministers, the Chairman of the Radio and Television Committee and four leaders from provinces containing minorities. The Commission cooperated closely with the minorities themselves; it was in charge of programming State policy and initiatives and coordinating the administration's actions with regard to minorities.

11. One essential aspect of that policy was to guarantee the ethnic minorities the possibility of studying their various mother tongues. At present it was possible to learn Byelorussian, Lithuanian, Slovak, German and Ukrainian. Minorities were also entitled to found different types of associations, and the State budget provided for funds for maintaining their cultural

associations. Minorities participated in local government through territorial self-management, and members of minorities were members of administrative bodies at the commune level.

12. Regarding the recent legislative elections, she explained that, given the dissemination of minorities throughout the national territory, the Elections Act was much more flexible where they were concerned, and their candidates had to meet less strict requirements than the others. She noted that a special National and Ethnic Minorities Commission had been set up in the Diet. The Commission was made up of 20 or so delegates who met regularly with the minorities' representatives.

13. The gypsies numbered 10,000 to 15,000 in Poland, but the figure was decreasing because many gypsies were emigrating to Germany. They were grouped into four associations which sought to assert their national minority status. The year 1990 had brought into existence the first gypsy publication, which was sponsored and subsidized by the Ministry of Culture and the Arts. With regard to education, many gypsy children did not attend school, and efforts were being made to set up special classes for them. There was as yet no teaching of the gypsy language in Polish schools, but the need to remedy that situation was being considered.

14. Referring to events that had recently taken place in Poland, during which several gypsy homes and vehicles had been destroyed, she said that the authorities strongly condemned those acts and that criminal proceedings had been instituted against 16 persons suspected of being responsible for them. There was no doubt that the culprits would be convicted in accordance with the law. Moreover, a special commission had been set up to inquire into the matter; the inquiry had shown that the incidents had been the result of an exacerbated feeling of frustration among the local population, linked to the sharp decline in the standard of living of a large number of inhabitants of the region due to the economic restructuring of the country. She was not seeking to justify the events that had occurred, but simply to explain that they in no way betokened an attitude of intolerance or discrimination against gypsies on the part of the Polish population.

15. In conclusion, she stated that the gypsy population in Poland was protected in the same way as all other ethnic minorities, and she hoped that its rights would be respected not only by the authorities but also by the citizens as a whole.

16. Mr. HERNDL expressed appreciation for the clarifications provided by the Polish delegation on the question of minorities. The information received was definitely more substantial than that contained in the part of the report (CCPR/C/58/Add.10) dealing with the implementation of the provisions of article 27 of the Covenant.

17. He noted that the representative had said that ethnic minorities represented 800,000 persons in Poland; that indicated a sharp increase in the size of ethnic minorities which had nearly doubled in relation to the figure indicated in Poland's second periodic report (CCPR/C/32/Add.9 and Add.13).

18. Thus ethnic minorities represented a very large community in Poland, and he also noted that it was the first time that a periodic report by Poland to the Human Rights Committee referred to a German minority. Paragraph 177 of the report (CCPR/C/58/Add.10) stated that the problems of the German minority had been raised during bilateral talks between Poland and the Federal Republic of Germany. Those discussions had culminated in an agreement between the two States, which contained provisions relating to that minority.

19. He was particularly pleased to note that the Polish authorities were aware that adequate protection of minorities required both a legal framework and affirmative action. The latter aspect also implied that the State would to some extent practise what might be termed "positive discrimination" in favour of minorities, to enable them to speak their language and preserve their identify.

20. Regarding education, there was a need to distinguish between the opportunity to learn one's mother tongue and the history and culture of one's minority in school and the possibility of being taught entirely in the minority language. The report submitted by Poland (CCPR/C/58/Add.10) was not clear on that point. It seemed that minorities in Poland were able to learn their language, but that they could not receive a general education in their mother tongue. He would like some clarifications in that regard. There were also a few confusing points in connection with the figures submitted by the Polish delegation. If minorities made up 800,000 persons in Poland, it was disturbing to note that only 6,347 pupils belonging to monorities were taking courses in their mother tongue, as stated in paragraph 176 of the report (CCPR/C/58/Add.10). Certain indications implied that Lithuanians, Byelorussians and Germans were still refused education and textbooks in their mother tongue.

21. At a time when it was remodelling its Constitution and legal system, Poland had a unique opportunity to play a leading role in the area of protection of minorities. The Polish authorities should make a particular effort to comply with international standards in that area, and minority rights should be given more consideration than had been the case so far. In that connection, he was pleased to note that an advisory body had been established to discuss questions of concern with the ethnic minorities. That was a first step which the Polish authorities should follow up in order for it to serve as an example for other countries.

22. Mr. SADI said that he found the proliferation of political parties in Poland to be natural after such a long period with no democracy. That having been said, he would like to know whether the Polish authorities took the provisions of article 20 of the Covenant into account in the process of legalizing political parties. Paragraph 2 of that article provided that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence was prohibited by law. He wondered what the authorities' attitude would be if some of the 50 or so parties requesting legal recognition advocated goals similar to those prohibited under article 20 of the Covenant. Was the Polish Government planning to adopt a law prohibiting parties whose statutes or activities violated the provisions of article 20? He would like further information on that question.

23. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the country had a total of 197 schools where minority languages were taught. The difficulties in that area were due to the dispersion of the members of minority groups. For example, the Ukrainian minority was distributed over 49 regions of the country, and the Jewish population was also highly scattered. On the other hand, the teaching of the mother tongue was easier for the Lithuanian minority, which was mainly to be found in the north-eastern part of the country. It was true that the number of pupils (6,300) learning minority languages was relatively low, but that was probably due not to a lack of incentives, but rather to a certain lack of interest in the teaching of minority languages. However, the situation could only improve, in view of the calm and thorough dialogue that had been initiated with the representatives of the ethnic minorities in order to settle problems and avoid conflicts.

24. Regarding party political activities, she explained that there were no restrictions at the registration stage, but that questions might be raised later on if the Constitutional Court found that a certain party was conducting unconstitutional activities. When the Court issued a decision to that effect, it could recommend a change in the party's statutes or programme. A party's activities could only be prohibited if they were aimed at forcibly overthrowing the constitutional order of the Republic. She pointed out that there were 91 political parties in Poland, not 50.

25. The CHAIRMAN said that the Committee had come to the end of the list of issues to be taken up in connection with the consideration of the third periodic report of Poland. He invited the members to make concluding observations on their consideration of the report as a whole.

26. Mr. FODOR recalled that, when the second periodic report of Poland had been considered, the members of the Committee had praised its excellence, the highly competent delegation and the fruitful dialogue that had begun with the Committee. The same could be said of the consideration of the third periodic report, especially as far-reaching changes had occurred during the period since the submission of the second report. Thanks to efforts aimed at modifying the social and political system, legislation and practice had been considerably improved, despite a very difficult economic situation. In that connection, neither the Government in its report nor the Polish delegation in its introduction had referred to the adverse consequences of the economic situation for the implementation of the Covenant, although the connection should be obvious, especially regarding conditions of detention, actions by the police, the dissemination of information and job discrimination. At the same time, the example of Poland showed that even in a very difficult economic situation, great progress could be made if determination and favourable political conditions were present.

27. He congratulated the State party on the progress it had made in the area of human rights and strengthening democracy in the country. He thanked the Polish delegation for its cooperation with the Committee.

28. Mr. HERNDL welcomed the excellent dialogue that had been established between the Polish delegation and the Committee. The Polish Government was to be commended for submitting its report on time, particularly in view of the difficulties the country was currently undergoing. The Polish delegation had

given a remarkably frank description of the human rights situation in Poland and the changes that had occurred in recent years. Although certain questions remained unanswered, it must nevertheless be hoped that the Polish Government would take the Committee's observations into account when continuing its restructuring of the Polish legal system.

29. The report had some gaps, especially regarding the treatment of minorities, and the Polish Government should take all the necessary measures for dealing with that issue, in particular by strictly observing the provisions of the Covenant. He was not unaware of the difficulties currently facing the Polish people and Government, and he sincerely hoped that Poland's next periodic report would indicate a definite improvement in the human rights situation in the country.

30. Mr. EL SHAFEI thanked the Polish delegation for the highly competent replies it had given to the numerous questions raised by the members of the Committee, thus enabling a constructive dialogue to be established. The detailed information provided by the delegation on the implementation of the new laws adopted in Poland had given the Committee a better understanding of the process begun to bring those laws more into line with the provisions of the Covenant. Poland's ratification of a number of international human rights instruments and the Government's declared intention to ratify the Optional Protocol were also very significant developments.

31. As some members of the Committee had noted, some improvements still needed to be made; he hoped that Poland's next periodic report would deal with all the questions raised and that the Polish authorities would take advantage of the dialogue that had occurred between the delegation and the Committee in order further to promote respect for human rights in the country.

32. Mr. WENNERGREN noted with satisfaction that the consideraton of Poland's third periodic report had shown that Poland was truly a State under the rule of law which had made impressive progress in very little time. The Polish delegation had replied with great competence to the many questions raised by the members of the Committee, but some questions had probably been more sensitive than others. He had asked in particular whether Polish legislation was really in conformity with article 9, paragraphs 3 and 4, of the Covenant, which enshrined the principle of habeas corpus. He would like to be more fully informed on that point, which he found extremely important. Finally, he hoped that the Polish Government and people would continue to progress in their efforts to achieve full respect for human rights.

33. Mrs. HIGGINS expressed particular satisfaction with the Polish Govenment's punctual submission of its report, the excellence of the information supplied, the frequent application of the provisions of the Covenant by the courts, the important role played by the Civil Rights Spokesman, the steps taken to ratify the Optional Protocol and the great number of bills to amend the legislation so as to ensure greater respect for human rights.

34. However, the Polish delegation itself had acknowledged that certain problems persisted. In particular, she wondered why capital punishment was expected to be maintained in the revised Constitution and Penal Code. Similarly, regarding pre-trial detention, it seemed that the legislation

should be amended in such a way that questions relating to family visits and access to a lawyer would be settled not by the public prosecutor, but by the courts. The new legislation should also provide for the possibility of filing an appeal against a decision to place a person in a psychiatric institution, in keeping with the provisions of article 9 of the Covenant. On another matter, the replies given to the questions relating to the implementation of article 19 of the Covenant did not appear to be entirely satisfactory, and it would be helpful if the Polish authorities would again define the criteria applied in restricting freedom of expression. With regard to article 27 of the Covenant, she realized that States parties were not bound under the Covenant to provide education entirely in minority languages, but that it was rather a question of preserving the minority cultures. She did not doubt that the dispersion of minority groups made it difficult to dispense instruction in the respective mother tongues in Poland. Finally, the fact that few questions had been raised concerning trade unions did not mean that the Committee was not interested in that issue, but that it had taken note of the detailed information contained in the report.

35. Ms. CHANET praised the quality of the Polish report and thanked the Polish delegation for its oral introduction, in particular the frankness with which it had referred to the problem of ill-treatment of detainees. The explanations given seemed to be sufficient to allay certain doubts the Committee had expressed as to the incorporation of all the provisions of the Covenant into Polish internal legislation.

36. In the current process of remodelling the Constitution, the Polish Government should guarantee the principle of the presumption of innocence, enshrined in article 14, paragraph 2, of the Covenant, for that was a fundamental tenet that guaranteed the protection of individuals against any possibility of arbitrary behaviour by the State. With regard to freedom of thought and expression she shared the concerns expressed by the members of the Committee regarding the Act of 29 May 1989, which limited freedom of expression in certain areas. Finally, regarding the question of abortion, which was dealt with in the Polish report under the heading of the right to life, it should be stressed that the Committee had not yet taken a definite position on how that question should be approached.

37. Mr. LALLAH said that the Committee had indeed not yet formulated an opinion on the link between abortion and the right to life. A number of factors came into play, and for his part he did not believe that treating abortion as an offence was a step forward in implementing the provisions of the Covenant. Similarly, the Committee had not yet been able to adopt a general comment on article 27, and thus it could only interpret that article as meaning that minorities must not be prevented from exercising their rights in the areas of culture, language and religion. That was a complex problem, which the Committee had faced on a number of occasions when considering communications from members of minorities.

38. He noted with great satisfaction the Polish people's efforts in the last decade to implement the provisions of the Covenant and continue their traditional support for human rights. He hoped they would continue to make progress in their efforts to achieve full democracy.

39. Mr. SADI said that the dialogue between the Polish delegation and the Committee, while very interesting, perhaps did not provide a complete overview of the human rights situation in a country which was currently experiencing a deep upheaval. To have a clearer idea of that situation, one that was shared by all the countries of Eastern Europe that had recently undergone drastic changes, it might be advisable for Poland's next periodic report to be submitted to the Committee before the official deadline, namely 1994.

40. He would also like to know whether the Polish authorities were planning to reopen the cases of persons prosecuted and convicted not only for political reasons, but also for ordinary crimes, under outdated provisions found to be inconsistent with the Covenant and currently being revised, such as the Penal Code. It would also be advisable to enact a law in Poland prohibiting the legalization of those of the 90 political parties that reportedly violated article 20 of the Covenant by inciting people to violence or advocating racism or nazism. Finally, although some of the Covenant's provisions had already been invoked in Poland, the Covenant's status should certainly be reinforced.

41. Regarding the question of abortion, he said that he himself belonged to the minority who believed that the right to life applied to the foetus. However, it was true that the Committee had not yet reached a consensus on that problem.

42. Mr. MYULLERSON said that, in view of Poland's economic difficulties and its totalitarian past, the efforts of the country's authorities to implement international human rights instruments and carry out democratic reform were all the more praiseworthy. He hoped that the dialogue that had just taken place at a crucial moment in Poland's history would help the Polish authorities to enact the necessary laws and enforce them. In any event, he was convinced that democracy would prevail in Poland.

43. Mr. ANDO also expressed appreciation for the exemplary dialogue that had taken place between a State party and the Committee. Five years earlier, when Poland's second periodic report had been submitted, he had just joined the Committee. While he hoped that he himself had gained some experience, he noted that enormous progress had been made in the meantime by a country whose tragic history was reflected in its aspirations for freedom and democracy.

44. However, there remained certain aspects of respect for human rights that should be improved. Some of the issues that came to mind were the treatment of persons in pre-trial detention, the duration of pre-trial detention, and the absolute prohibition of abortion. Human rights information for the population in general should also be developed, in particular in the schools. He was convinced, however, that despite its difficulties, Poland would be able to make the transition from a planned economy to a more liberal economy, and he hoped that its experience with the Committee would make a useful contribution to that process.

45. Mr. PRADO VALLEJO joined the other members of the Committee in expressing appreciation for the positive, sincere and objective dialogue that had just taken place. Unlike the delegations of some countries, which occasionally resorted to pretexts for justifying the persistence of certain problems, the Polish delegation had expressed itself clearly and sincerely and had not

hesitated to admit, in the report and orally, that a number of difficulties persisted. Yet there had been enormous progress in the country, not only with regard to human rights legislation, but also in the moves towards peaceful democratic reform. That evolution bore witness to the maturity of the Polish people.

46. Among the new regime's steps to guarantee respect for human rights was the enactment of laws providing the people with the possibility of invoking remedies in the area of respect for human rights and fundamental freedoms. Some problems continued to arise, of course, but they could certainly be overcome. In particular, the treatment of detainees in police custody should be better controlled. It was not sufficient to investigate reported abuses: efforts must be directed to preventing their recurrence. The prolongation of pre-trial detention, which could last up to two years, was also excessive and inconsistent with the provisions of the Covenant. The Polish authorities should also ensure that the house searches which could be carried out in the event of a national emergency being decreed did not lead to abuses. The provisions restricting the freedom of the television stations - which had hitherto been under State control - and of publications that undermined freedom of expression should also be revised.

47. However, the overall picture in Poland was highly positive, despite the many difficulties raised by the transition from totalitarianism to democracy, of which the Latin American countries were only too well aware. The fact that the Polish authorities had taken the time to think about the laws needed to ensure respect for human rights was to be welcomed.

48. The CHAIRMAN noted that all the members of the Committee joined in paying a tribute to the remarkable progress made in Poland since the submission of that country's previous periodic report five years before. Thanks to those developments, Polish practice and legislation had become more consistent with the Covenant, although changes inevitably gave rise to criticism. There had been obvious progress not only in civil but also in political rights, and the legislative elections that had just taken place showed that political pluralism now existed in Poland. In revising the legislation, the authorities had tried to take account of international human rights standards, in particular the International Covenant on Civil and Political Rights. Examples were the provisions governing the treatment of minorities, which were in conformity with article 27 of the Covenant and which, in particular, authorized the members of minorities to use their own language. Regarding the problem of abortion, as Ms. Chanet, Mrs. Higgins and Mr. Lallah had pointed out, the Committee had not yet developed a common position.

49. It was very unusual for a State party to submit its report by the prescribed deadline and then provide additional information on new developments up to the month before the session at which the report was considered. Countries which, like Poland, were undergoing deep upheavals often failed to submit their reports in order to avoid revealing their difficulties and exposing themselves to criticism. Yet the Polish authorities had allowed the Committee to study the situation in their country at a crucial time, when such an exercise could precisely be the most useful.

50. For his part, he was convinced that Poland's fourth periodic report, which was to be submitted by 27 October 1994, would indicate still further progress. In conclusion, he conveyed his great appreciation to the Polish delegation and its interpreter, who had singlehandedly provided interpretation for all the exchanges of views between the State party and the Committee. Finally, he asked the Polish delegation to give the best wishes of the members of the Committee to their former colleague, Mr. Zielinski.

51. Mrs. SKORZEWSKA-LOSIAK (Poland) said that the report just considered by the Committee was the first one to be prepared by Poland under democratic conditions and to describe the changes in the country as it went from an authoritarian system to a State under the rule of law, where human rights would be respected and where the well-being of everyone was the ultimate goal.

52. She sincerely thanked the members of the Committee, who had thoroughly and sympathetically analysed the contents of the report and who had not hesitated to point out its gaps. The remarks, doubts and concerns they had expressed would help the Polish authorities to improve their legal system and implement it better. Her delegation, for its part, was happy to have shown through its report how concerned the country was fully to respect human rights and fundamental freedoms. She hoped that its valuable relations with the Committee would not be limited to submitting periodic reports and that Poland would shortly accede to the Second Optional Protocol aiming at the abolition of the death penalty. Although it was not impossible that some complaints involving respect for human rights in Poland would reach the Committee, no effort would be spared in Poland to improve the situation.

53. The CHAIRMAN said that the Committee had completed its consideration of the third periodic report of Poland.

The first part (public) of the meeting rose at 5.05 p.m.